IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 19 OF 2007

Mr. Ashwin Savio Elison
Jose Do Rosario Souza,
s/o Garth D'Souza,
residing at Hotel Villa Sol,
Ashwin Resorts Pvt. Ltd.,
Near Hotel Cidade-de-Goa,
Dona Paula, Panaji, Goa. ... Petitioner

versus

ST A T E ... Respondent

Mr. V. Rodrigues, Advocate for the Petitioner.

Ms. Winnie Coutinho, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 29TH JUNE, 2007.

ORAL ORDER

Heard Mr. V. Rodrigues, the learned Counsel on behalf of the petitioner.

2. This petition has been filed to quash the proceedings in C. C. No. IPC/20/2006/C pending before the learned Judicial Magistrate, First Class at

Panaji, filed under Sections 498-A and 506(ii) I.P.C.

3. The said case came to be filed upon a complaint filed by the petitioner's wife Mrs. Ana Karina Furtado.

4. The petitioner, as accused and the said Mrs. Ana Karina Furtado, being the first informant filed an application before the learned trial Court for compounding the said offences and the said application came to be rejected by Order dated 24-4-2007 of the learned J.M.F.C. stating that the offences were not compoundable.

5. The said Mrs. Ana Karina Furtado has filed an affidavit before this Court stating that the said case was initiated at her instance in view of the complaint filed by her dated 20-2-2005. She has also stated that she and her husband i.e. the petitioner have amicably settled their differences and have no grievances against one another and that she is not interested in pursuing the said case against the petitioner.

6. On behalf of the petitioner, the learned Counsel on behalf of the petitioner has placed reliance on the cases of **B. S. Joshi and others** v. **State of Haryana and another**(AIR 2003 SC 1386) and **Kiran Tulshiram Ingale** v. **Smt. Anupama P. Gaikwad and others**(2006(6) AIR Bom R 97(DB).

7. In Criminal Miscellaneous Application(Main) No.246/2006 in the case of **Mrs. Surekha Kumbharjuvekar** v. **Mr. Hanumant Kundaikar and others**, by Judgment dated 13-7-2006 it was stated thus:-

> "Admittedly, an offence under Section 498-A has been made non compoundable and cannot be compounded by virtue of Section 320 Cr. P. C. However, it does appear that the next remedy is provided by the next Section of the Cr. P. C. i.e. Section 321 of the Code which gives powers to the Public Prosecutor to withdraw the cases".

8. The Apex Court, it appears has provided another remedy and that is by way of quashing the proceedings, in appropriate cases, as reported in the case of **B. S. Joshi and others** v. **State of Haryana and another**(supra). On behalf of the petitioner, it is stated that the petitioner and his wife Mrs. Ana Karina Furtado have also been divorced and therefore no useful purpose would be served by continuing the said criminal case, for the compounding of which permission has been refused.

9. Since both the parties have now stated that they have amicably settled their differences and have also got their marriage dissolved no useful purpose would be served by continuing the said criminal case.

10. Consequently, the petition deserves to succeed. The first information filed by the said Mrs. Ana Karina Furtado dated 20-2-2005 along with further proceedings which have taken place pursuant to the said FIR in C. C. No. IPC/20/2006/C are hereby quashed and set aside. Consequently, the petitioner who is accused in the said case shall stand acquitted under Sections 498-A and 506(ii) I.P.C.

N. A. BRITTO, J.

RD